

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1003 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-

and

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES
 2. To be referred to the Reporter or not? YES :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO
 5. Whether it is to be circulated to the Civil Judge? : NO
NO

M/S NEW AHMEDABAD SYNTHETICS PVT LTD

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners
MR PANDYA AGP for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 01/03/2000

RULE. Learned advocate Mr.Pandya waives service of Rule for the respondents. The short question in the matter arises as to what should be the last date for making the payment.

2. The petitioner was served with a show cause notice at Annexure-A to the petition dated 15.5.1995 under the provisions contained in the Central Excises and Salt Act, 1944 and the Rules made thereunder calling upon him to make various payments of duty as mentioned in para 18 of the show cause notice. After issuance of the show cause notice, it appears that the petitioner submitted a declaration under Section 88 of the Finance (No.2) Act, 1998. The petitioner, with a view to avail of the benefit of the Kar Vivad Samadhan Scheme, approached the Designated Authority, Customs & Central Excise, Ahmedabad-I, with Form No.1-B under the Kar Vivad Samadhan Rules, 1998. The Commissioner of Central Excise, Ahmedabad-I issued a Certificate of Intimation under Section 91 (1) of the Finance (No.2) Act, 1998. The certificate clearly indicates that the amount determined as payable under Section 18 (1) of the Finance (No.2) Act, 1998 was Rs.20,31,513. In the said certificate, so far as the payment is concerned, the Commissioner directed as under:

"The declarant is hereby directed to make payment of the sum payable within thirty days from the date of this Certificate."

It appears that, vide Annexure-F, the office of the Commissioner of Central Excise, Ahmedabad-I, addressed a communication that, as the amount was not paid as payable as per Form No.2-B within 30 days from the date of issue of Form No.2-B Certificate, the petitioner is not eligible for full and final settlement of tax arrears Certificate in Form No.3 under Kar Vivad Samadhan Scheme, 1998. The said letter is addressed by the Joint Commissioner of Central Excise, H.Q., Ahmedabad. There is no dispute before us that the Certificate was received on 20.11.1998. The amount was deposited in the treasury by an account payee cheque on 19.12.1998. However, 20.12.1998 being a Sunday, the amount was realised on 21.12.1998. It is required to be noted that Sunday being a holiday, the Joint Commissioner of Central Excise, H.Q., Ahmedabad ought to have realised that, if the act is required to be completed on the last day and if that day is a holiday, or is subsequently declared as a holiday, then, the act is required to be completed on the

next day. So far as court proceedings are concerned, Section 4 of the Limitation Act, 1963 is required to be considered. It reads as under:

"4. Expiry of prescribed period when court is closed: Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.

Explanation: A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day."

3. So far as computation of time is concerned, the General Clauses Act, 1897 is required to be considered. Section 10 thereof reads as under:

"10. Computation of time: (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open.

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies.

(2) This section applies to all Central Act and Regulations made on or after the 14th day of January, 1887."

4. Thus, in the instant case, the petitioner was directed to make payment within a period of 30 days and the last day, being a holiday, the amount has been credited in the Government treasury on the next day, the same must be considered as if the amount was paid within the time specified. It is under these circumstances, the order at Annexure-F is required to be quashed and set aside with a direction to the respondent No.2 to consider

the matter and issue appropriate certificate in

accordance with law. Special Civil Application is
allowed. Rule is accordingly made absolute with no order
as to costs.

(KMG Thilake)

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